



## PLANNING COMMISSION STAFF REPORT DECEMBER 9, 2010

<b>Project:</b>	<b>DIAMOND PALACE CUP AMENDMENT (PLN2010-00284)</b>
<b>Proposal:</b>	To reconsider a Conditional Use Permit Amendment to allow a concert hall with up to twelve (12) events per year within an existing dinner theater, restaurant, and banquet hall facility.
<b>Recommendation:</b>	Approve based upon findings and subject to conditions
<b>Location:</b>	4100 Peralta Boulevard in the Centerville Planning Area. APN 501-0536-002-06 (See aerial photo next page)
<b>Area:</b>	10,650 square foot tenant space within a 36,290 square foot building on a 2.72-acre lot
<b>People:</b>	Omar Amerie, Diamond Palace, Applicant Roger Shanks, Roger Shanks Consulting, Agent of Applicant Wei Wong, Tree of Life Lord's Harvest Christian Church, Property Owner Joel Pullen, Staff Planner (510) 494-4436; <a href="mailto:jpullen@fremont.gov">jpullen@fremont.gov</a>
<b>Environmental Review:</b>	This project is categorically exempt from CEQA per section 15301, existing facilities.
<b>General Plan:</b>	Community Commercial
<b>Zoning:</b>	Planned District P-2003-5 (CSPC) [Referencing Community Commercial]

### EXECUTIVE SUMMARY

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On October 14, 2010, Planning Commission approved a Conditional Use Permit similar to this one for a concert hall venue. On, October 22, 2010, the applicant appealed two conditions of approval related to operational hours and simultaneous events onsite to the City Council. The appeal has been taken off the City Council's calendar pending the Commission's action on this request for amendment.

The applicant is requesting Planning Commission consider a Conditional Use Permit Amendment for the concert venue with longer hours of operation and concurrent use of the adjacent on-site venue in consideration of a modified business plan wherein no alcoholic beverages will be served on the premises during concert venues and alcohol service at the adjacent venue will end by 11:00 PM. Staff recommends approval of the revised concert venue use based upon findings and subject to conditions.



Figure 1: Aerial Photo (2009) of Project Site and Surrounding Area.

## SURROUNDING LAND USES

Northeast: Auto-related uses and rear parking lots for buildings fronting on Fremont Boulevard

Southwest: Auto-related uses, miscellaneous retail, and non-profit facility

Southeast: Religious facility

Northwest: Beauty College and miscellaneous commercial across Peralta Boulevard

## **BACKGROUND AND PREVIOUS ACTIONS**

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In 2003, Planned District P-2003-5 (CSPC) was approved, permitting a church along with the existing banquet hall, restaurant, and dinner theater in the three tenant spaces at the subject location. The Diamond Palace (formerly Flamingo Palace and Mirage Palace) occupies 4100 and 4120 Peralta Boulevard, while the Tree of Life Lord's Harvest Christian Church is the landowner and occupant of 4140 Peralta. Events at the facility are governed by Planned District P-2003-5 (CSPC) conditions of approval, conditions for which allow additional community commercial uses, including additional venue types, via Conditional Use Permit.

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## **PROCEDURE FOR TONIGHT'S HEARING**

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At tonight's hearing, the Planning Commission is charged with completing the following primary task:

- Consider a request to amend the Conditional Use Permit (CUP) to allow up to twelve concerts per year within an existing facility currently approved for a dinner theater, restaurant, and banquet hall, based upon findings specified in Section 8-22509 (a-g) of the Fremont Municipal Code.

## **PROJECT DESCRIPTION**

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The existing facility located at 4100-4120 Peralta Boulevard has been operated with approvals for a restaurant, banquet hall, and dinner theater since 2003, and has been used for various events dating back to the opening of the Mirage Palace/Flamingo Palace in 1996. The new tenant began operation in August 2008, and is applying for the subject CUP Amendment to permit operation of a concert hall at the facility in addition to the other uses currently permitted.

The applicant describes the proposed concert hall purpose as "bringing cultural events and entertainers predominantly for the Afghan and Indian communities." Under the proposal, there would be up to twelve (12) such concerts per year, with no more than two (2) concerts in any given month. The primary difference from the current operation is the concerts would be open to the general public; typically the banquets are private events. Additionally, the seating would be arranged in rows (typical of a theater) and there would not be tables. The dance floor would be covered so it would not be accessible to the patrons.

The amendment request proposes:

- No alcohol service or consumption before, during or after concert venues in consideration of expanded hours of concert operation until 1:00 a.m. and departure of all guests by 1:30 a.m.
- Simultaneous use of the adjacent dinner theater/banquet hall and restaurant facility wherein all alcohol service will be terminated by 11:00 p.m.

## PROJECT ANALYSIS

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### ***General Plan Conformance***

The existing General Plan land use designation for the project site is Community Commercial. The proposed project is consistent with the existing General Plan land use designation for the project site because concert venues are within the range of commercial uses compatible with the Community Commercial land use designation. The project will accommodate The following General Plan Goals, Objectives and Policies are applicable to the proposed project:

FUNDAMENTAL GOAL 8: A diversity of residential, recreational, cultural, employment and shopping opportunities.

Policy LU 2.20: Implement the adopted land use policies of the Centerville Specific Plan

Analysis: The proposed addition of a concert venue within the existing facility provides additional cultural opportunities in Centerville. The Centerville Specific Plan references the Fremont Municipal Code for uses in Subarea 5 (see below).

### ***Centerville Specific Plan Conformance***

The proposed project is located in Subarea 5 of the Centerville Specific Plan. Regulatory provisions for commercial uses in Subarea 5 are limited to appropriate provisions of the Fremont Municipal Code (esp. the Zoning Ordinance) described above. The specific plan calls for commercial uses along Maple Street.

### ***Redevelopment Plan Conformance***

This project is located within the Centerville Redevelopment Area. The Amended and Restated Redevelopment Plan for the Centerville Redevelopment Project calls for the following selected goals and objectives applicable to this project:

21. The attraction of appropriate new businesses and the retention and expansion of existing businesses in coordination with Citywide economic development programs.
22. The preservation and creation of civic, cultural and educational facilities and amenities as a catalyst for area revitalization.

The proposed use would provide an additional cultural venue in the form of addition of the concert hall use where a banquet hall, restaurant, and dinner theater business currently exists.

### ***Zoning Regulations***

As set forth in Section 8-21103 of the Fremont Municipal Code (FMC), Concert halls with 100 seats or more are allowed in the Community Commercial (C-C) District subject to review and approval of a Conditional Use Permit. Condition two (2) of Planned District P-2003-5 (CSPC) [applicable to this site] specifies that review authority for conditional uses within the Community Commercial district lies with the Planning Commission.

### *Parking*

The concert hall venue provides 253 parking spaces in compliance with the minimum parking standard requirement of 226 parking spaces pursuant to Section 8-22003 [Required parking spaces by type of use] of the FMC (1 space per each four fixed seats). The project provides 201 on-site and 52 off-site parking spaces, 27 spaces more than the required minimum of 226 parking spaces. A condition is proposed requiring the acquisition of off-site parking spaces within the 700 foot radius maximum specified by the Fremont Municipal Code.

### *Architecture and Design:*

No changes to the existing site plan or architecture are proposed. Any modifications to the building or grounds, including sign permits, will be subject to separate subsequent review. The applicant is required by condition to satisfactorily resolve an expired permit for various internal safety work to ensure that work was completed in accordance with standards. In addition, the building code requires seating for a venue such as this one to use fixed seating, which staff will verify prior to operation of the venue for concerts. As with any large venue, the applicant must also apply for and receive an assembly permit from the Fire Department.

### *Public Safety:*

One of the primary considerations for a concert venue is the safety of patrons and the public surrounding an event of this proposed size. To this end, conditions of approval have been added to ensure compliance with the building and fire codes, adequate provision for controlling occupancy and providing information for public safety responders, and suitable parameters on security and operations.

Originally, the applicant proposed to serve alcohol in the facility. With the presence of alcohol, City staff recommended a condition to limit hours of operation to 11:30 p.m. and have the property vacated by 12:30 a.m. The applicant also originally proposed that no other onsite venue be in operation during a concert, but has since requested that they be allowed to operate both venues. Staff met with the applicant after the appeal was filed, and reached resolution, as follows.

In line with the family-oriented nature of the proposed use, the applicant has indicated that they will not serve or allow alcohol to be distributed, possessed, or consumed at the facility. Inclusion of alcohol at an event of this size was a primary reason for previous conditions of approval limiting the hours so as not to allow the number of potentially intoxicated individuals out of the building in the early morning hours. With the project modification to not serve alcohol and to limit sales hours in the adjacent tenant space on evenings when two venues are simultaneously operating, staff negotiated with the applicant to recommend a condition allowing the event to last until 1 a.m., with all attendees to leave the property by 1:30 a.m. This allows any potential problems with the venue to resolve by 2 a.m., at which time existing bars in the area close, and calls for police service ordinarily increase.

### *Circulation*

The proposed development is located on Peralta Boulevard and Maple Street. Peralta Boulevard is an arterial street, and Maple Street is a collector. There are driveways on each, and both have full street improvements along the project's frontage. No improvements to adjacent streets are required or proposed for the proposed use.

## **FINDINGS FOR APPROVAL**

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In order to approve the proposed Concert Hall, the project must be found consistent with the General Plan and Zoning Ordinance. Based on the above analysis, staff finds the proposed Concert Hall is in conformance with General Plan and Zoning Ordinance and recommends the following findings:

### *Conditional Use Permit Findings*

- a. The proposed use is consistent with the General Plan because concert halls are one of a range of commercial uses allowable in the Community Commercial land use designation and that provide the diversity of cultural opportunities in Fremont consistent with Fundamental Goal 8.
- b. The site is suitable and adequate for the proposed use because the existing facility contains sufficient floor area of a construction type suitable for the proposed use, there is sufficient parking provided per FMC requirements, and conditions of approval have been proposed to prevent the use from becoming a nuisance.
- c. The proposed use would not have a substantial adverse effect on vehicular (including bicycle) or pedestrian circulation or safety, on transit accessibility, on the planned level of service of the street system or other public facilities or services. Concert uses would occur in the evening, and traffic impacts would be low given open traffic conditions at that time.
- d. The proposed use would not have a substantial adverse economic effect on nearby uses because the use is immediately surrounded primarily with auto-serving businesses, large parking lots, and daytime use facilities with which the proposed use would not interfere.
- e. The proposed use would not be detrimental to the general welfare of persons residing in the immediate vicinity, the neighborhood or the community at large because there are adequate controls proposed in the form of conditions of approval that will prevent the use from becoming a nuisance.
- f. The design of the project is compatible with existing and proposed development in the district and its surroundings because halls and cultural venues exist in the vicinity, and the area is centrally located in Centerville, for which cultural venues are appropriate.
- g. The project will comply with the provisions of article 27 of this chapter (Site Plan and Architectural Approval) because no changes are proposed for the facility.

The findings above are also contained in Exhibit "B" enclosed.

## **ENVIRONMENTAL REVIEW**

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The proposed project is exempt from the California Environmental Quality Act (CEQA) per Guideline 15301, Existing Facilities.

## **NOTICE AND COMMENT**

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Public hearing notification is applicable. A total of 924 notices were mailed to owners and occupants of property within 1000 feet of the site. The notices to owners and occupants were mailed out and a Public Hearing Notice was published by *The Tri-City Voice* on November 29, 2010.

## **ENCLOSURES**

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### ***Exhibits:***

- Exhibit "A" [Site Plan and Floor Plan](#)
- Exhibit "B" [Findings and Conditions](#)

## **RECOMMENDATION**

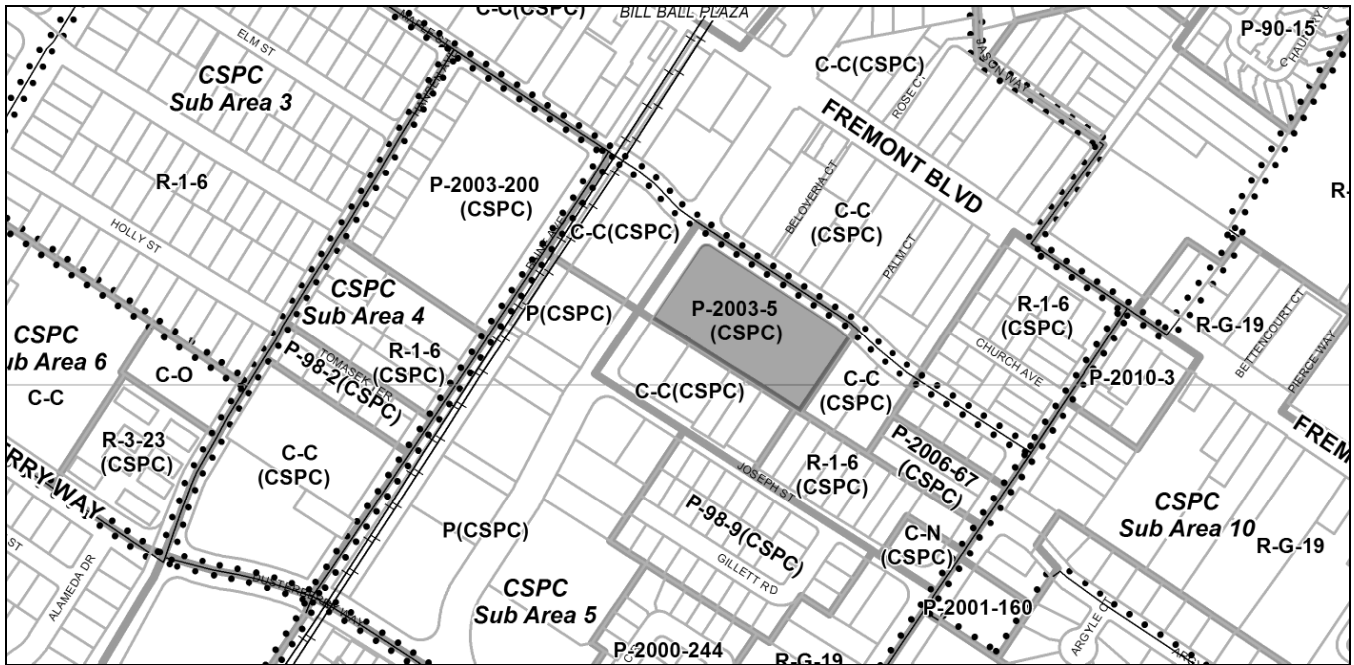
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1. Hold public hearing.
2. Find that the project is categorically exempt from the California Environmental Quality Act (CEQA) under CEQA Guideline 15301, Existing Facilities.
3. Find Conditional Use Permit Amendment PLN2010-00284 is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals, objectives and policies set forth in the General Plan's Land Use Chapter as enumerated within the staff report. The project also conforms to the goals, objectives, and policies of the Centerville Specific Plan.
4. Approve Conditional Use Permit Amendment PLN2010-00284, as shown on Exhibit "A", subject to findings and conditions in Exhibit "B".



## Existing Zoning

Shaded Area represents the Project Site



## Existing General Plan

